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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2212/2012*, **

Communication submitted by:	Andrei Sannikov[1] (not represented by counsel)
Alleged victim:	The author
State party:	Belarus
Date of communication:	12 July 2012 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 26 November 2012 (not issued in document form)
Date of adoption of Views:	6 April 2018
Subject matters:	Conviction of an opposition leader; unlawful detention; unfair trial; torture and forced confession; inhuman conditions of detention; unlawful interference with privacy; freedom of expression; freedom of peaceful assembly; discrimination on the ground of political opinion
Procedural issues:	Level of substantiation of a claim; State party's failure to cooperate
Substantive issues:	Torture; cruel, inhuman or degrading treatment or punishment; arbitrary detention; right to be brought promptly before a judge; right to a fair hearing by an impartial tribunal; right to be presumed innocent; right to adequate time and facilities for the preparation of defence; right to communicate with counsel of one's own choosing; right to examine witnesses; right not to be compelled to testify against oneself or to confess guilt; right to privacy; freedom of expression; right of peaceful assembly; equality before the law and equal protection of the law; effective remedy

* Adopted by the Committee at its 122nd session (12 March–6 April 2018).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Ilze Brands Kehris, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Ivana Jelić, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

[1] The author's family name can also be spelled as Sannikau.

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Articles of the Covenant: 7, 9, 10, 14, 17, 19, 21 and 26

Article of the Optional Protocol: 2

1. The author of the communication is Andrei Sannikov, a national of Belarus born in 1954. He claims that the State party has violated his rights under articles 7, 9, 10, 14, 17, 19, 21 and 26 of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is unrepresented.

The facts as submitted by the author

2.1 The author is a politician and activist. He was a career diplomat, who served in various high-ranking positions,[2] including as Deputy Minister of Foreign Affairs from 1995 to 1996, and obtained the rank of Ambassador Extraordinary and Plenipotentiary. In November 1996, he resigned from the position of Deputy Minister for Foreign Affairs, in protest against a referendum held that year that led to the amendment of the Constitution of Belarus, expanding the powers of the executive and limiting certain rights and freedoms. In November 1997, he co-founded the Charter 97 civil initiative. He organized non-violent protests against the presidential and parliamentary elections of 2001, 2004, 2006 and 2008. In 2005, he was awarded the Bruno Kreisky Prize for services to human rights. In 2008, together with a group of other prominent Belarusian politicians, he launched the European Belarus civil campaign.[3] He considers himself to be one of the leaders of the political opposition in Belarus.

2.2 In October 2010, the author registered as a candidate for the presidential elections scheduled for 19 December 2010, along with nine other candidates, including the President of Belarus, Mr. Aleksandr Lukashenko. During his electoral campaign, the author made numerous statements to the media and to voters referring to the illegitimacy of the incumbent President's powers, and criticizing the regime and the undemocratic nature of the electoral process. In particular, he encouraged his supporters to join a peaceful demonstration in support of the opposition during the evening of election day. The demonstration was supposed to start at 8 p.m. in Oktyabrskaya Square, in the centre of Minsk, and seven other presidential candidates also called on their respective supporters to participate in the event.

2.3 The author submits that, pursuant to articles 5 and 9 of the Public Events Act of 30 December 1997, all public gatherings are subject to prior authorization by the authorities, in this case, the Minsk City Executive Committee, and that the square chosen by the organizers for the peaceful demonstration was not among the locations approved for that purpose by the Minsk authorities.[4] The author was fully aware that, in the absence of official authorization, the demonstration would be considered unlawful, and he had been warned by the Prosecutor General's Office that such a public event was impermissible. The author maintains, however, that neither he nor the other opposition candidates applied for authorization to organize the demonstration, since they knew that, given the prevailing political climate and administrative practices, there was no chance that it would be granted. Nevertheless, during the election campaign, the author and other opposition candidates attempted to discuss the upcoming event with the competent authorities. They unsuccessfully requested meetings with the Minister for Internal Affairs and the Head of the State Security Agency, and, on 17 December 2010, during an interview, the Head of the State Security Agency said that law enforcement officers could not discuss requests to hold demonstrations with the opposition because such events were illegal.[5]

[2] From 1992 to 1995, the author headed the delegation of Belarus on nuclear and conventional weapons disarmament negotiations, and had the authority to sign on the matter on behalf of Belarus. From 1993 to 1995, the author was an advisor to the diplomatic mission of Belarus in Switzerland.

[3] The campaign advocates the accession of Belarus to the European Union and is aimed at promoting the fulfilment of the criteria in that regard.

[4] Reference is made to points 1 and 2 of decision No. 1302 of 3 December 1998 of the Minsk City Executive Committee prohibiting the organization of gatherings, meetings, street processions, demonstrations and pickets in Oktyabrskaya Square, Minsk.

[5] The author states that references to the interview are included in Emmanuel Decaux, "OSCE rapporteur's report on Belarus" (Organization for Security and Cooperation in Europe, 28 May 2012).

2.4 On 11 December 2010, the head of the presidential administration claimed, in a statement broadcast on a public television channel, that the opposition was gathering a group of gunmen and stores of pyrotechnical and explosive devices with the aim of creating disorder during the demonstration scheduled for 19 December 2010.

2.5 At around 8 p.m. on 19 December 2010, members of the public began gathering in Oktyabrskaya Square, Minsk, as a part of an unauthorized demonstration. Most of the opposition candidates, including the author, and about 15,000 of their supporters, took part in the demonstration to protest against what they believed to be an unfair election, denouncing major electoral irregularities and fraud. The event was peaceful and none of the speakers called for disorder or violence. The author made a speech criticizing the undemocratic character of the regime and pointing out that the results of the unofficial exit polls differed from the official election results.[6] The author and the other opposition candidates invited their supporters to proceed to the House of Government on Nezavisimost Square, in order to start direct negotiations with the authorities, and to ensure that the Central Electoral Commission did not commit violations during the vote counting process. Police officers watched the demonstration, but did not interfere. At around 9 p.m. the majority of the demonstrators, including the opposition candidates, started to peacefully walk along Nezavisimost Avenue, including in the actual road,[7] towards the House of Government and the offices of the Central Electoral Commission. The author specifies that, although he did not initiate the use of the road by the demonstrators, he walked along in the middle of the column of protestors. Around 40,000 persons gathered in Nezavisimost Square. Opposition candidates, including the author, made speeches but did not call for disorder or violence. There were no law enforcement agents or other security arrangements in front of the House of Government, even though the authorities had sufficient time and means to organize a security perimeter.

2.6 At around 9.45 p.m. a small, isolated group of unidentified individuals began throwing stones at the House of Government. They were accompanied by persons filming the events with video cameras. However, the law enforcement agents on the scene did not intervene for the first 30 minutes. Several of the opposition candidates,[8] including the author, tried to approach the House of Government in order to start negotiations with the authorities. They told the crowd to keep calm and avoid committing acts of vandalism, stating that the stone-throwing was the work of government agents attempting to provoke the demonstrators. One of the opposition candidates, Vitaly Rymashevsky, made such an announcement on a loudspeaker. Special police units moved in after around half an hour and formed a chain in front of the gates of the House of Government, where they remained for 10 minutes before leaving. Subsequently, a small group of individuals continued breaking the windows and doors of the House of Government. At some stage, the opposition candidates were told that the law enforcement bodies were ready to negotiate, and the author, his wife and Nikolai Statkevich approached the House of Government. The author looked through the doors and asked police officers standing inside the building if they could negotiate. There was no reaction and the candidates returned to the podium. Half an hour later, police units moved in and started to disperse the crowd in Nezavisimost Square, using disproportionate force, including such means as riot shields and batons. The majority of the demonstrators did not resist, but the police proceeded to beat them up. The author notes that at no point during the demonstration did the authorities call on the crowd

p. 32, and in the report of the Special Rapporteur on the Events of 19 December 2010 of the Committee on International Control over the Human Rights Situation in Belarus. The Committee on International Control was created on 27 December 2010, largely as a reaction to the events immediately following the presidential elections of 19 December 2012. It brings together more than 40 non-governmental organizations (NGOs) from 17 participating States of the OSCE.

[6] The President of Belarus, Mr. Aleksandr Lukashenko was declared the winner by the Central Electoral Commission, with 79.67 per cent of the votes. The author received the second-highest share of the votes (2.56 per cent).

[7] According to the information available on file, the road was inaccessible for transport for a total of 52 minutes.

[8] The other opposition candidates present were Nikolai Statkevich, Grigory Kostusev and Vitaly Rymashevsky. The author's wife, Irina Khalip, was also present.

to disperse voluntarily. The author was hit on the leg and the head and lost consciousness.[9] When he recovered consciousness, he realized that his leg had been seriously injured and that he needed medical assistance. Friends offered to drive him to a hospital and he agreed. However, the police stopped the car after a few kilometres and dragged the author out, arresting him using disproportionate force. While being arrested, he was beaten and kicked, receiving blows to the face, head, arms and torso, resulting in multiple haematomas on his head, arms and torso, and a severe injury to his leg.

2.7 The author was initially held in a temporary confinement cell at a facility on Okrestina Street, Minsk, and shortly thereafter transferred, under the pretext of being transported to hospital, to a State Security Agency pretrial detention centre, where he was held until the end of his trial. On 20 December 2010, criminal proceedings were initiated against the author under article 293, part 1, of the Criminal Code (organization of mass disorder, accompanied by violence against persons, pogroms, arson, destruction of property or armed resistance against the authorities) and article 293, part 2, of the Criminal Code (involvement in riots, including the committing of acts specified in the first part of article 293). On 22 December 2010, the Prosecutors' Office ordered that the author be held on remand and he remained in detention until the trial. The author was officially charged under article 293, parts 1 and 2, of the Criminal Code on 29 December 2010. The charges against him were formulated in a general manner and did not specify what acts he was accused of committing. The author maintains that his remand in custody was illegal and unfounded under domestic legislation.[10] Furthermore, his remand in custody was authorized by the Prosecutor,[11] who is not authorized by law to exercise judicial power. The author's lawyers filed appeals against his remand in custody and requests for his release on bail on 23 December 2010, 21 January 2011, 28 January 2011, 24 February 2011, 25 March 2011, 5 April 2011, 8 April 2011, 11 April 2011 and 27 April 2011, all of which were either rejected or ignored by the courts.[12]

2.8 The author submits that, during the pretrial investigation, his contact with his lawyers was restricted. During the period 19 December 2010–22 March 2011, while he was being held at the State Security Agency pretrial detention centre, his attorneys were informed by the detention centre authorities that they could not visit him because there were no rooms available for that purpose. At no point during the period of his detention did the author have the opportunity to communicate with his lawyers confidentially while investigative actions were ongoing. His lawyers filed complaints in that regard on 23 December 2010, 29 December 2010, 6 January 2011, 27 January 2011 and 16 February 2011. All of those complaints were ignored or rejected by the investigators or by the detention centre authorities. Furthermore, on 3 March 2011, the author's initial lawyer, Pavel Sapelko, was disbarred by the Minsk City Bar Association and had his licence withdrawn by the Ministry of Justice, allegedly after he had publicly raised concerns about the author's "horrendous" condition and the Government's mistreatment of him during his pretrial detention.

2.9 The author submits that, while being held at the State Security Agency pretrial detention centre, he was subjected to torture and ill-treatment. When he was brought to the detention centre on 20 December 2010, he had numerous injuries resulting from the beating he had received, but he was not provided with medical assistance. He was denied access to toilet facilities for five hours, placed in a very small, cold cell and forced to lie on a bare wooden floor. He could barely use the narrow space allocated to him due to the severe pain in his injured leg. After three to four days, he was allocated space on a wooden bunk bed but he was ordered to lie still facing a bright light. The light in the cell was always kept switched on. He was not allowed to change position on the wooden bunk bed and, if he fell

[9] According to Working Group on Arbitary Detention opinion No. 14/2012, para. 5, the police assaulted the author by pinning him down with a riot shield and jumping on it repeatedly, thereby severely injuring his legs. His friends attempted to shield his head, and, with the help of his wife, managed to free him.

[10] Reference is made to article 117 (1) and (2) and article 126 (1) of the Code of Criminal Procedure.

[11] Reference is made to article 119 of the Code of Criminal Procedure.

[12] Copies of the appeals submitted on the author's behalf, and of the respective court decisions, are available on file.

asleep and turned over, the warders would wake him and the rest of his cell mates up and order them to adopt the above-mentioned position again. He wrote a letter of complaint to the Head of the State Security Agency pretrial detention centre, after which he was transferred to another cell, where he was again forced to sleep on the floor. His injured leg caused him substantial pain. The cell itself did not have a toilet and the author was allowed to use external toilet facilities only twice a day. He was subjected to humiliating daily searches, during which unidentified individuals in balaclavas forced him to run up and down steep stairs despite his injured leg, ordered him to remove his clothes, subjected him to verbal abuse and beat him with sticks. Each time he left his cell, the author was handcuffed, with his hands placed behind his back.

2.10 The author was deprived of contact with his relatives and did not receive any news from them for a month after his arrest. He was told that his wife had also been detained and that he would lose custody of his 3-year-old son and his family would be subjected to brutal measures unless he confessed.[13] In particular, on 31 December 2010, the author was visited by the Head of the State Security Agency, who openly threatened the life and health of his wife and child. Since the author perfectly knew that the official in question had the power to deliver on that threat, he agreed to confess after their second encounter. During subsequent interrogations, the author's "testimony" was discussed in advance by the police officer and the investigator in charge of the case and then recorded, in line with the interrogation protocol. Although the author's lawyer was present, the author was not allowed to talk to or even look at him, so he did not receive any legal assistance. In the course of the interrogations, the author was subjected to psychological and physical pressure. He was also deprived of any contact with the outside world, including access to newspapers and public television. The author was forced to watch the so-called internal television channels, which broadcast anti-Semitic propaganda and footage of violent scenes. In March 2011, the author's request to be hospitalized in order to receive treatment for an acute form of gout was rejected by the administration of the pretrial detention centre. On 8 April 2011, the author submitted a written complaint of torture and ill-treatment to the head of the unit in charge of investigating crimes against life, health and property of persons of Minsk City Department of Internal Affairs, but no investigation followed.

2.11 The author and his lawyers submitted complaints regarding the disproportionate use of force against him during his arrest and, on 20 December 2010, requested a medical examination of his injuries, but the request was rejected on 23 December 2010 by the State Security Agency investigator. The author's lawyer filed an appeal against the rejection with the Prosecutor General of Belarus, through the bodies in charge of pretrial investigation. On 14 February 2011, he received a reply, signed by the same State Security Agency investigator, in which it was stated that the request for medical examination had already been decided upon and rejected. Thus, the appeal was never transmitted to the Prosecutor General's Office. On 12 May 2011, during a hearing before Partizansky District Court, Minsk, the author stated that prison guards had tortured him, that he had been deprived of sleep and exposed to severe cold and that his family had been threatened in an effort to secure confessions. He testified that some of the evidence submitted by the Government had been obtained from him under duress. In response, the Prosecutor presented the court with a letter, dated 17 May 2011, signed by the Deputy Prosecutor of Minsk, stating that the author's allegations had not been confirmed. The court did not order any further investigation of those allegations. In all his subsequent appeals, the author complained to no avail that he had been subjected to torture and ill-treatment while detained at the State Security Agency pretrial detention centre.

2.12 The author submits that, while the pretrial investigation regarding his case was being carried out, a number of State-controlled media outlets published articles or broadcast documentaries in which it was stated that he was guilty of having committed crimes in

[13] According to Working Group on Arbitrary Detention, opinion No. 14/2012, para. 9, the author was forced to confess to attempting to carry out a coup d'état, armed resistance against representatives of the Government, planning pogroms and arson and organizing mass disorder accompanied by violence

connection with the events of 19 December 2010.[14] The President of Belarus, Mr. Aleksandr Lukashenko, also referred to the author's guilt in interviews with state-controlled television channels and with the Washington Post on 28 February 2011.

2.13 At the end of the pretrial investigation, while familiarizing himself with the materials relating to his case, the author learned that the Deputy Prosecutor General of Belarus had authorized the recording of telephone calls made by the author, his wife and members of his electoral campaign during the period 28 July 2010–19 December 2010, including when he was already officially registered as a candidate for the presidential elections. The author's complaint of wiretapping was sent to the Prosecutor General of Belarus at the end of May 2011. Although he has never received a reply to that complaint and no investigation followed, information obtained illegally through that instance of wiretapping was used by the trial court as evidence of the author's guilt.

2.14 On 15 April 2011, the Prosecutor's Office forwarded the author's case to the trial court. According to the final indictment, he was charged under article 293, part 1, of the Criminal Code with: appealing to the public to participate in a demonstration on 19 December 2010; spreading false information that the elections had been undemocratic and their results had been falsified; planning and preparing to incite the crowd to aggression; initiating a march from Oktyabrskaya Square to Nezavisimost Square; and manipulating the crowd with the aim of gaining access to the House of Government. During the hearings before Partizansky District Court, Minsk, the author's and his lawyers' numerous requests to, among other things, conduct examinations, adduce evidence, examine specific witnesses and submit video recordings made on 19 December 2010 using closed-circuit television cameras situated in Nezavisimost Square, were rejected.[15] For example, the author's lawyers took witness statements on his behalf and provided photographs of Nezavisimost Square on the night of the demonstration. Those photographs were not, however, accepted as evidence by the court. In contrast, the court allowed the Prosecutor to enter as evidence recordings of telephone conversations involving the author, whose telephone had been tapped during the presidential campaign. The prosecution furnished no evidence that, at the demonstration, the author had committed, or incited other persons to commit, acts of disorder, violence, harm to individuals or destruction of property. In addition to the injuries he sustained to his legs during his arrest, the author has a documented history of medical problems. On multiple occasions, he requested the court to temporarily suspend the trial proceedings so that he could receive medical assistance, but those requests were refused.

2.15 On 14 May 2011, the author was found guilty, under article 293, part 1, of the Criminal Code, of having organized mass disorder, and sentenced to five years' imprisonment in a high security penal colony. He filed a cassation appeal with Minsk City Court, stating, inter alia, that his rights under articles 7, 9, 14, 17, 19, 21 and 26 of the Covenant had been violated. The author had asked to be permitted to attend the hearing in person, but his request was rejected. The author's cassation appeal was rejected by Minsk City Court after a very short hearing on 15 July 2011, and the author's sentence entered into force. On an unspecified date, the author's lawyers filed a request for a supervisory review with the Chair of Minsk City Court, which was rejected on 12 October 2011. On another unspecified date, the author's lawyers filed a further request for a supervisory review with the Chair of the Supreme Court, which was rejected by the Deputy Chair of the Supreme Court on 27 January 2012. A second request for a supervisory review filed with the Chair of the Supreme Court was rejected by the First Deputy Chair of the Supreme Court on 9 April 2012.

2.16 The author submits that, while serving his sentence, he was transferred from one penal colony to another on two occasions without being informed of the reasons for those transfers, and that he was deprived of the possibility of meeting with his lawyers between 17 November 2011 and 16 January 2012. Each time the author's lawyers visited the penal

[14] See *Sovietskaya Belorussiya*, "Behind one conspiracy" (in Russian), 14 and 21 January 2011; "The square: iron against the glass" (in Russian), broadcast by Belarus-TV 1, on 9 January 2011; and the documentary "Ploščad-2010. Contrrevoljucija" (Square-2010. Counterrevolution) (in Russian).

[15] The author provides a detailed list of procedural actions that he requested and that were rejected by the trial court.

colony to meet with him, they were told that, owing to "protection measures" applied to the author due to the threat to his life invoked by him, they would not be able to meet with their client. One of the author's lawyers complained about the refusal to be allowed to meet with his client at penal colony No. 4 in the Mogilev Region on 17 November 2011, but on 19 December 2011 he was informed by the Prosecutor's Office that they had not found a violation of the author's right to defence. On 30 January 2012, the lawyer appealed against the refusal to allow him to meet with his client to Leninsky District Court, Mogilev, but the appeal was refused on 3 February 2012. On 10 February 2012, the refusal was further appealed against by the author's lawyer before Mogilev Regional Court, which rejected the appeal on 2 April 2012. On 30 April 2012, the author's lawyer filed a request for a supervisory review of the above-mentioned decisions with the Chair of Mogilev Regional Court, but the appeal went unanswered. Similarly, the author's lawyers appealed against the refusals to allow them to meet with their client during the period November 2011–16 January 2012 to the Prosecutor's Office of the Mogilev Region, the Prosecutor General of Belarus, the competent departments of the Ministry of Interior and the Minister of the Interior, but all their appeals were rejected.

2.17 The author's lawyers also complained to the Vitebsk District Court of the Vitebsk Region about the refusal to be allowed to meet with their client at penal colony No. 3 of the Vitebsk Region in December 2011, but the complaint was rejected on 6 January 2012. On an unspecified date, the refusal was further appealed against by the author's lawyers before the Vitebsk Regional Court, which rejected the appeal on 30 January 2012. On 31 January 2012, the author's lawyers filed a request for a supervisory review of the aforementioned decisions with the Chair of the Vitebsk Regional Court, who rejected it on 2 March 2012. On an unspecified date, the author's lawyers filed a request for a supervisory review with the Chair of Minsk City Court, which was rejected by the Deputy Chair of the Supreme Court on 26 April 2012. The author states that he was only permitted to meet with his lawyers at penal colony No. 3 of the Vitebsk Region after 16 January 2011 and that, during the "blackout period", his access to written correspondence and telephone calls with his lawyers and family members was equally restricted.

2.18 On 14 April 2012, the author was granted a presidential pardon and the remainder of his sentence was remitted. The pardon did not, however, cover the expungement of his conviction from his criminal record.[16] He was placed under so-called preventive observation, as a part of which he was required to inform the relevant departments of the Ministry of Interior of any change of place of residence, or absence from his habitual place of residence for more than one month, and to appear before the above-mentioned authorities upon request to explain his behaviour and lifestyle.

2.19 The author submits that he has exhausted all available and effective domestic remedies.

The complaint

3.1 The author claims that his rights under article 7 of the Covenant have been violated, since the investigating officers, officers of the State Security Agency pretrial detention centre and other State Security Agency officers subjected him to torture, ill-treatment and psychological pressure at the pretrial investigation stage, with the aim of obtaining a confession. The author also claims that he suffered bodily harm as a result of the disproportionate force used against him during the security operation carried out by special police units in Nezavisimost Square on 19 December 2010 and during his subsequent arrest. Despite the numerous complaints submitted by the author and his lawyers to the State party's relevant authorities and courts (see paragraphs 2.9–2.11 above), no prompt, objective and independent investigation of those allegations has ever been initiated.

3.2 The author claims that his arrest and detention failed to comply with the guarantees contained in article 9 of the Covenant. He states that the initial decision on the pretrial constraint measure and the continued extension of his remand in custody were unlawful, because they did not take into account the circumstances of the case, or his individual

[16] The law precludes any convicted person from standing in future elections.

circumstances. The author points out that neither the State party's authorities that remanded him in custody nor the courts have provided any explanation as to why constraint measures envisaged under the Code of Criminal Procedure other than remand in custody and/or his release on bail could not have been applied in his case. The author adds that his remand in custody was sanctioned by the Prosecutor, who is not authorized by law to exercise judicial power, as required by article 9 (3) of the Covenant (see paragraph 2.7 above).

3.3 As to the alleged violation of article 10 of the Covenant, the author submits that, between 17 November 2011 and 16 January 2012, he was prevented from meeting with his lawyers by the administrations of the penitentiary institutions where he was serving his sentence, under the pretext that the "protection measures" applied to him in order to ensure his security made such a meeting impossible. He adds that, during the "blackout period", his access to written correspondence and telephone calls with his lawyers and family members was equally restricted (see paragraph 2.17 above).

3.4 The author also claims that he has been denied a fair trial before an independent and impartial tribunal, in violation of article 14 (1) of the Covenant. He states that the courts rejected the key evidence presented in his defence, accepting, instead, prejudicial and irrelevant evidence submitted by the Prosecutor's Office. The courts also refused to interview specific witnesses identified by the author's lawyers, and overruled all of the defence motions, while systematically sustaining prosecution motions (see paragraph 2.14 above). The author adds that, by failing to examine witnesses on his behalf, the courts also violated the right guaranteed under article 14 (3) (e) of the Covenant. The author maintains that the court system in Belarus as such is not independent and refers to a number of reports in support of his claim.[17]

3.5 The author further submits that, during the period 19 December 2010–22 March 2011, he was not allowed to meet with his lawyers and to communicate with them confidentially during the conduct of investigative actions. Furthermore, his initial lawyer was disbarred by the Minsk City Bar Association and had his licence withdrawn by the Ministry of Justice, allegedly after he had publicly raised concerns about the author's "horrendous" condition and the Government's mistreatment of him during his pretrial detention (see paragraph 2.8 above). The author further claims that his right to be presumed innocent, as guaranteed under article 14 (2) of the Covenant, was violated, because the state-controlled media and the State party's authorities publicly accused him and other opposition candidates of attempting to overthrow the incumbent President prior to and after the presidential elections, and stated that the author was guilty of having committed crimes in connection with the events of 19 December 2010 before his guilt had been established by the courts. The author adds that, also in violation of his right to be presumed innocent, he was handcuffed and placed in a cage in the courtroom throughout the hearings relating to his case.

3.6 The author claims a violation of article 17 of the Covenant, arguing that the State party's authorities unlawfully recorded telephone calls made by the author, his wife and members of his electoral campaign during the period 28 July 2010–19 December 2010, when he was already officially registered as a candidate for the presidential elections of Belarus. He argues that the wiretapping was unnecessary, illegal and unjustified, and was therefore a violation of his right to privacy. Furthermore, information obtained illegally through that instance of wiretapping was used by the trial court as evidence to prove his guilt (see paragraph 2.13 above).

3.7 The author also claims a violation of his rights to hold opinions without interference and to freedom of expression, as guaranteed under article 19 of the Covenant, because the restrictions imposed by the State party on the exercise of those rights were not provided for by law and were not necessary in a democratic society. He adds that the so-called criminal acts attributed to him by the courts included, inter alia, the spreading of the "false information" that the current Government was illegitimate, that the elections had been undemocratic and that the results thereof had been falsified by the Central Electoral

[17] See OSCE/Office for Democratic Institutions and Human Rights, *Report: Trial Monitoring in Belarus (March–July 2011)* (10 November 2011); and E/CN.4/2001/65/Add.1.

Commission. He contends, in that regard, that the incriminating statements were, in fact, true, as confirmed by the numerous reports of the Organization for Security and Cooperation in Europe (OSCE)/Office for Democratic Institutions and Human Rights on elections in Belarus.[18] The author further states that the State party's authorities prosecuted him and sentenced him to five years' imprisonment for exercising his right to freedom of expression. He adds that such a punishment is manifestly disproportionate, especially given that the investigating bodies failed to show that there was a direct causal link between his incriminating statements and the unlawful actions of the unidentified individuals who stormed the House of Government on 19 December 2010.

3.8 The author states that he was one of the co-organizers of the unauthorized peaceful public gathering on 19 December 2010. He adds that, according to the international standards concerning the exercise of the right of peaceful assembly, as guaranteed under article 21 of the Covenant, the State party's authorities have a positive duty to ensure the security of peaceful assemblies even when they have not been formally authorized. The author contends that the State party's authorities failed to comply with that duty when they failed to quickly contain the unlawful actions of a small, isolated group of individuals who stormed the House of Government at 9.45 p.m. on 19 December 2010 (see paragraph 2.6 above). The author submits that his own actions were entirely peaceful, and that he never called on his supporters to storm the House of Government. Rather, he publicly called on them to keep calm and to avoid carrying out any violent acts. Despite the fact that the demonstration organized by the author and other opposition candidates was meant to be a peaceful gathering, it was dispersed by the State party's authorities in violation of article 21 of the Covenant, using disproportionate force. The author himself was subsequently found guilty, under article 293, part 1, of the Criminal Code, of having organized mass disorder. The author argues in great detail that the provisions of article 293 of the Criminal Code are too vague and broad to be able to foresee the legal consequences of one's actions and that domestic law contains no definition of "mass disorder". The author concludes that, by sentencing him to five years' imprisonment under article 293, part 1, of the Criminal Code for having organized an unauthorized but peaceful public gathering, the State party disproportionately interfered in the exercise of his right of peaceful assembly under article 21 of the Covenant. Furthermore, such interference is not provided by law, i.e. the law has gaps.

3.9 The author claims that the acts qualified by the courts as "organization of mass disorder" in his case (including, encouraging supporters to join the peaceful demonstration on Oktyabrskyaya Square and to proceed to Nezavisimost Square, criticizing the current Government and attempting to approach the House of Government in order to start negotiations with law enforcement bodies) had also been "committed" by the other opposition candidates.[19] However, some of them were found guilty of having committed less serious crimes,[20] while others were not prosecuted.[21] The author submits that it is unclear why the same acts committed by different individuals resulted in different legal consequences. He argues that, in violation of article 26 of the Covenant, the State party's authorities discriminated against him on the ground of his political opinion, thus depriving him of equality before the law and the equal protection of the law.

Lack of cooperation by the State party

4. By notes verbales of 26 November 2012, 29 January 2014, 19 November 2014 and 16 February 2015, the Committee requested the State party to submit to it information and observations on admissibility and the merits of the present communication. The Committee notes that this information has not been received. The Committee regrets the State party's failure to provide any information with regard to admissibility or the substance of the author's claims. It recalls that article 4 (2) of the Optional Protocol obliges States parties to

[18] See OSCE/Office for Democratic Institutions and Human Rights, election observation mission reports of 4 October 2001, 7 June 2006, 10 December 2010 and 22 February 2011.

[19] The author mentions, for example, Vitaly Rymashevsky, Grigory Kostusev and Yaroslav Romanchuk.

[20] For example, Vitaly Rymashevsky was found guilty under article 342, part 1, of the Criminal Code (organization and preparation of acts gravely violating public order).

[21] The author mentions, for example, Grigory Kostusev and Yaroslav Romanchuk.

examine in good faith all allegations brought against them and to make available to the Committee all information at their disposal. In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that they have been properly substantiated.[22]

Issues and proceedings before the Committee

Consideration of admissibility

5.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

5.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

5.3 The Committee notes the author's assertion that all available and effective domestic remedies have been exhausted. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

5.4 The Committee also notes the author's claim under article 26 of the Covenant that the State party's authorities discriminated against him on the ground of his political opinion, since the other opposition candidates who took part in the unauthorized peaceful demonstration on 19 December 2010 were found guilty of having committed less serious crimes, while some were not prosecuted (see paragraph 3.9 above). The Committee considers that the author has insufficiently substantiated his claim under article 26 of the Covenant, for the purposes of admissibility and therefore considers it inadmissible under article 2 of the Optional Protocol.

5.5 The Committee considers that the author has sufficiently substantiated the remaining claims under articles 7, 9, 10, 14, 17, 19 and 21 of the Covenant, for purposes of admissibility. Accordingly, it declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

6.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

6.2 With regard to the author's claim that he was subjected to torture, ill-treatment and psychological pressure at the pretrial investigation stage, with the aim of obtaining a confession, the Committee notes that he provided a detailed description of the methods used, such as exploiting his vulnerable state of health, threatening to use brutal measures against his immediate family and humiliating techniques, such as sleep deprivation and daily bodily searches. The Committee also notes the author's claim that he suffered bodily harm as a result of the disproportionate use of force against him by members of special police units during the security operation in Nezavisimost Square on 19 December 2010 and during his subsequent arrest. The Committee further notes that, despite suffering from multiple injuries, the author was not provided with medical assistance, and his requests for the medical examination of his injuries were rejected. The Committee notes the author's claim that, during the "blackout period" from 17 November 2011 to 16 January 2012, he was prevented from meeting with his lawyers, and that his access to written correspondence and telephone calls with his lawyers and family members was also restricted. According to the documents available on file, those claims have been presented by the author himself and his lawyers to the relevant State party's authorities and courts on numerous occasions. In particular, on 12 May 2011, during a hearing before Partizansky District Court of Minsk,

[22] See, for example, *Samathanan v. Sri Lanka* (CCPR/C/118/D/2412/2014), para. 4.2, and *Diergaardt et al. v. Namibia* (CCPR/C/69/D/760/1997), para. 10.2.

the author stated that prison guards had tortured him, that he had been deprived of sleep and exposed to severe cold, and that his family had been threatened in an effort to secure confessions. He testified that some of the Government's evidence had been obtained from him under duress. In response, the prosecutor presented Partizansky District Court of Minsk with a letter, dated 17 May 2011, signed by the Deputy Prosecutor of Minsk, stating that the author's allegations had not been confirmed. The court did not order any further investigation of those allegations. The Committee recalls in that regard that, once a complaint about treatment contrary to article 7 of the Covenant has been filed, a State party must investigate it promptly and impartially.[23] The Committee further notes that the State party has failed to indicate how its respective authorities and courts investigated the author's allegations that he was subjected to torture, ill-treatment and psychological pressure with the aim of obtaining a confession of guilt. In the circumstances, due weight must be given to the author's claims, and the Committee considers that the facts as submitted disclose a violation of article 7 of the Covenant.

6.3 In the light of the above conclusions, the Committee does not find it necessary to examine separately the author's claims under article 10 of the Covenant.

6.4 The Committee also recalls its previous jurisprudence that the wording of article 14 (3) (g) of the Covenant, that no one shall be compelled to testify against himself or to confess guilt, must be understood in terms of the absence of any direct or indirect physical or psychological pressure from the investigating authorities on the accused with a view to obtaining a confession of guilt.[24] The Committee also recalls that, in cases involving allegations of forced confessions, the burden is on the State to prove that statements made by the accused have been given of their own free will.[25] In the circumstances, the Committee concludes that the facts before it also disclose a violation of 14 (3) (g) of the Covenant.

6.5 The Committee notes the author's claim, under article 9 of the Covenant, that the pretrial constraint measure applied to him and the continued extension of his remand in custody were unlawful, because they did not take into account the circumstances of the case and his individual circumstances. The author points out that neither the State party's authorities that remanded him in custody nor the courts have provided any explanation as to why constraint measures envisaged in the Code of Criminal Procedure other than remand in custody and/or his release on bail could not have been applied in his case. The Committee notes that the author's claims were brought to the attention of the State party's relevant authorities and courts and were rejected by them in a perfunctory manner. The Committee recalls in that regard that the notion of "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.[26] That means, inter alia, that remand in custody on criminal charges must be reasonable and necessary in all circumstances, for example, to prevent flight, interference with evidence or the recurrence of crime.[27] The State party has not demonstrated that those risks existed in the present case. In the absence of any further information, therefore, the Committee concludes that there has been a violation of article 9 (1) of the Covenant.

6.6 The Committee further notes the author's claim that his remand in custody was sanctioned by the Prosecutor, who is not authorized by law to exercise judicial power, as required by article 9 (3) of the Covenant. The Committee recalls that the above-mentioned provision entitles a detained person charged with a criminal offence to judicial control of his/her detention. It is inherent to the proper exercise of judicial power that it be exercised by an authority that is independent, objective and impartial in relation to the issues dealt

[23] See, for example, *Aliev v. Ukraine* (CCPR/C/78/D/781/1997), para. 7.2.

[24] See *Berry v. Jamaica* (CCPR/C/50/D/330/1988), para. 11.7; *Singarasa v. Sri Lanka* (CCPR/C/81/D/1033/2001), para. 7.4; and *Deolall v. Guyana* (CCPR/C/82/D/912/2000), para. 5.1.

[25] See Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 41.

[26] See Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 12.

[27] See, for example, *Alphen v. Netherlands* (CCPR/C/39/D/305/1988), para. 5.8.

with.[28] The Committee is, therefore, not satisfied that the Prosecutor could be regarded as having the institutional objectivity and impartiality necessary to be considered an officer authorized by law to exercise judicial power within the meaning of article 9 (3) of the Covenant,[29] and concludes that there has been a violation of that provision.

6.7 The Committee notes the author's claims that he was denied a fair trial before an independent and impartial tribunal, in violation of article 14 (1) of the Covenant (see paras. 2.14 and 3.4 above), and that the State party's courts did not offer him the minimum guarantees contained in article 14 (3) (b) and (e) of the Covenant (see paras. 2.8 and 3.5 above). The Committee also notes the author's claim that, during the period 19 December 2010–22 March 2011, he was not allowed to meet with his lawyers or to communicate with them confidentially during the conduct of investigative actions. The Committee further notes the author's assertion that his initial lawyer was disbarred by the Minsk City Bar Association and had his licence withdrawn by the Ministry of Justice, allegedly after he publicly raised concerns about the author's "horrendous" condition and the Government's mistreatment of him during his pretrial detention. In the absence of comments from the State party to counter the author's allegations, the Committee concludes that the facts before it constitute a violation of article 14 (1) and (3) (b) and (e), of the Covenant.

6.8 With regard to the allegations of violations of article 14 (2), the Committee notes the author's claim that his right to be presumed innocent has been violated, because the state-controlled media and the State party's highest authorities publicly accused him of attempting to overthrow the incumbent President, and stated that the author was guilty of having committed crimes in connection with the events of 19 December 2010 before his guilt had been duly established by the court (see paras. 2.12 and 3.5 above). The author also claimed that he was handcuffed and placed in a cage in the courtroom throughout the hearings relating to his case. The State party did not contest those allegations. The Committee recalls that the accused person's right to be presumed innocent until proved guilty by a competent court is guaranteed by the Covenant. In the absence of any relevant information from the State party, the Committee concludes that the facts as described by the author disclose a violation of article 14 (2) of the Covenant.

6.9 The author also claims a violation of article 17 of the Covenant, arguing that the State party's authorities unlawfully tapped his telephone, recording calls made by himself, his wife and members of his electoral campaign during the period 28 July 2010–19 December 2010, including when he was already officially registered as a candidate for the presidential elections of Belarus. He further argued that the wiretapping was unnecessary, illegal and unjustified, and was therefore a violation of his right to privacy. Furthermore, information obtained illegally through that instance of wiretapping was used by the trial court as evidence to prove the author's guilt. The Committee notes in that regard that the author's complaint to the Prosecutor General of Belarus about wiretapping remained unanswered, and that the State party has not commented on the author's detailed allegations in that regard. The Committee therefore concludes that the facts before it amount to a violation by the State party of the author's right under article 17 of the Covenant.

6.10 The Committee notes the author's claim that his criminal conviction under article 293, part 1, of the Criminal Code constituted a violation of his rights to hold opinions without interference and to freedom of expression, as guaranteed under article 19 of the Covenant, because the restrictions imposed by the State party on the exercise of those rights were not provided for by law and were not necessary in a democratic society. The author argued that the State party's authorities prosecuted him and sentenced him to five years' imprisonment for exercising his right to freedom of expression. The Committee also notes the author's claim that such a punishment was manifestly disproportionate because the investigating bodies did not show that there was any direct causal link between the author's incriminating statements and the unlawful actions of the unidentified individuals who stormed the House of Government on 19 December 2010.

6.11 The Committee refers to its general comment No. 34 (2011) on the freedoms of opinion and expression, which states that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person, and that such freedoms are

[28] See *Kulomin v. Hungary* (CCPR/C/50/D/521/1992), para. 11.3; and *Platonov v. Russian Federation* (CCPR/C/85/D/1218/2003), para. 7.2.

[29] See Human Rights Committee, general comment No. 35 (2014), para. 32.

essential for any society. They constitute the foundation stone for every free and democratic society (para. 2). The Committee recalls that article 19 (3) of the Covenant allows certain restrictions only such as are provided by law and are necessary: (a) for the respect of the rights or reputations of others; and (b) for the protection of national security or of public order (ordre public), or of public health or morals. Any restriction on the exercise of such freedoms must conform to the strict tests of necessity and proportionality. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.[50] The Committee also recalls that it is for the State party to demonstrate that the restrictions on the author's rights under article 19 of the Covenant were necessary and proportionate.[51] In the present case, the Committee observes, however, that neither the State party nor the courts have provided any explanation as to how the restrictions imposed on the author in the exercise of his right to freedom of expression were justified pursuant to the conditions of necessity and proportionality set out in article 19 (3) of the Covenant. Accordingly, the Committee finds that the State party violated the author's rights under article 19 (2) of the Covenant.

6.12 The Committee notes the author's claim that, by sentencing him to five years' imprisonment under article 293, part 1, of the Criminal Code for having organized an unauthorized but peaceful public gathering, the State party disproportionately interfered in the exercise of his right of peaceful assembly under article 21 of the Covenant. Such interference is not provided for by law, since the provisions of article 293 of the Criminal Code are too vague and broad to be able to foresee the legal consequences of one's actions and there is no definition of what constitutes "mass disorder" in domestic law. Thus, the Committee recalls that the right of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right that is indispensable in a democratic society. That right entails the possibility of organizing and participating in a peaceful assembly, including a spontaneous one, at a public location. In the absence of any relevant information from the State party, the Committee concludes that, in the present case, the State party has violated the author's rights under article 21 of the Covenant.

7. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of articles 7, 9 (1) and (3), 14 (1), (2) and (3) (b), (e) and (g), 17, 19 (2) and 21 of the Covenant.

8. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide individuals whose Covenant rights have been violated with an effective remedy in the form of full reparation. Accordingly, the State party is obligated, inter alia, to provide Andrei Sannikov with adequate compensation, expunge his conviction from his criminal record and carry out a prompt, impartial, effective and thorough investigation into the allegations of torture and ill-treatment and initiate criminal proceedings against those responsible. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

9. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.

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[50] See Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 22.

[51] See, for example, *Pivonos v. Belarus* (CCPR/C/106/D/1830/2008), para. 9.3; and *Olechkevitch v. Belarus* (CCPR/C/107/D/1785/2008), para. 8.5, and *Androsenko v. Belarus* (CCPR/C/116/D/2092/2011), para. 7.3.